

In the Matter of)
)
 Amendment of Part 15 Regarding New Requirements) ET Docket No. 04-37
 and Measurement Guidelines for Access)
 Broadband over Power Line Systems)

**PETITION FOR RECONSIDERATION
OF THE
AMERICAN PETROLEUM INSTITUTE**

I. INTRODUCTION

¹ 70 Fed. Reg. 1360 (Jan. 7, 2005). Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband over Power Line Systems, *Report and Order*, ET Docket No. 04-37, FCC 04-245 (2004) (“*Order*”).

production, refining, marketing and transportation of petroleum, petroleum products and natural gas. The API Telecommunications Committee is one of the standing committees of the organization's General Committee on Information Management & Technology. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the petroleum and natural gas industries.

2. API's Telecommunications Committee is supported and sustained by companies that are authorized by the Commission to operate telecommunications systems in various of the licensed radio services, including extensive operations in the Private Land Mobile Radio Services ("PLMRS"), governed by Part 90 of the Commission's Rules. These PLMRS systems are used to support the search for and production of oil and natural gas, to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, to process and refine these energy sources and to facilitate their ultimate delivery to industrial, commercial and residential customers. A number of these PLMRS systems operate in the bands below 150 MHz, many utilizing channels in the 25-50 MHz band, some of which are dedicated primarily for oil spill containment and cleanup operations and related drills and training.²

3. Because BPL systems also operate in the spectrum below 150 MHz, over a wide range of frequencies, the HF and "low-band" PLMRS systems of API member companies and other licensees are potentially subject to interference from BPL operations. The continued operation of the private radio systems employed by petroleum and natural gas companies is absolutely essential to protecting lives, health and property, both in support of the day-to-day operations of these companies, as well as during responses to oil spills and other emergency incidents. These systems are integral to the provision of our nation's energy resources to the

² See 47 C.F.R. §§ 90.35(c)(8) and 90.35(c)(15).

public. Due to concerns about the potential impact of BPL operations on these systems, API submitted Comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") released in this proceeding in February 2004.

II. DISCUSSION

4. In the *Order*, the Commission concluded that public safety radio systems should be entitled to certain special protections -- not available to other types of licensees -- "because of the often critical and/or safety-of-life nature of the communications they provide." (*Order* at ¶ 52). For instance, the Commission determined that BPL operators should be required to provide at least 30 days notice to public safety agencies in their local areas prior to a BPL system's initial operation, the activation of any major extensions of the system, or any changes in its operating characteristics. (*Id.*). The Commission also decided to impose a limit on the time in which BPL operators must respond to complaints of harmful interference only in instances where the complaint is made by public safety users; in particular, BPL operators will be required to respond to public safety interference complaints within 24 hours. (*Order* at ¶ 87).

5. API concurs with these measures to protect public safety licensees, but urges the Commission to extend the same protections to CII entities (including petroleum and natural gas companies). Like public safety licensees, CII entities -- by their very definition -- use their radio systems to provide communications that are often of a "critical and/or safety-of-life nature." In the Commission's recent decision in its proceeding to resolve public safety interference problems in the 800 MHz band (WT Docket 02-55), the Commission adopted the following definition of *Critical Infrastructure Industry* services for purposes of that proceeding:

Private internal radio services operated by State, local governments and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer

emergency road services, provided these private internal radio services (i) *are used to protect safety of life, health, or property*; and (ii) are not made commercially available to the public.³

As further discussed below, API believes that, in light of the safety-related functions of CII systems, the Commission's stated justification for providing special protections to public safety systems applies equally here to CII systems. Accordingly, CII systems should be treated the same as public safety systems for purposes of ensuring protection against interference from BPL operations.

A. CII Entities Should be Entitled to Elect to Receive Prior Notice of BPL Deployments in their Operating Areas

6. As noted above, the Commission determined in its BPL *Order* that, due to the “critical and/or safety-of-life nature” of public safety radio systems, BPL operators should be required to provide at least 30 days notice to public safety agencies in their local areas prior to a BPL system's initial operation, the activation of any major extensions of the system, or any changes in its operating characteristics. (*Order* at ¶ 52). The Commission believes that “[t]his advance notification will provide public safety operators with an opportunity to assess whether there are portions of its geographic area of responsibility about which it should make special arrangements with the Access BPL operator in order to avoid interference.” (*Id.*).

7. If the Commission is concerned with preserving the integrity of safety-related communications, it should extend this right of prior notice to CII entities. As the FCC recognized in its 800 MHz *Order*, “[a]n unresolved incident of unacceptable interference impairs the ability of the affected public safety or CII licensee to respond to an emergency, large or

³ Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, FCC 04-168 (2004) (hereinafter, “800 MHz *Order*”), at Appendix C, page 189 (amending Section 90.7 of the Commission's Rules to provide a definition for “Critical Infrastructure Industry”) (emphasis added).

small.” (*800 MHz Order* at ¶ 136 (emphasis added)). The Commission therefore concluded that both public safety and CII licensees are entitled to expect a more speedy resolution of 800 MHz interference complaints than are other types of licensees. (*Id.* at ¶¶ 136-137). Significantly, the Commission also determined, in its 800 MHz decision, that both public safety and CII licensees in the 800 MHz band will be entitled to request prior notice of at least ten business days before new 800 MHz commercial cells are constructed or existing cells are modified. (*Id.* at ¶ 124).⁴ Thus, the Commission clearly recognized that the public interest would be served by allowing both public safety and CII licensees to receive prior notice of new operations that pose a potential threat of harmful interference.

8. In light of the foregoing precedent, it is unclear why the Commission failed to extend to CII entities (like public safety licensees) a right of prior notice of new or modified BPL deployments. There is no logical reason to treat public safety and CII systems alike for purposes of 800 MHz band interference, while treating them differently for purposes of BPL interference. Like public safety licensees, CII entities could benefit greatly from an “opportunity to assess” the potential for interference from proposed BPL operations and to work with the BPL operator to ensure that the interference does not occur. (*See Order* at ¶ 52). Given the mission-critical and safety-related nature of CII communications, the Commission should support all reasonable and feasible measures aimed at preventing their impairment.

9. API acknowledges that it may be somewhat difficult or burdensome for a BPL operator to identify and locate all CII entities in its operating area, for purposes of providing such entities with 30 days advance notice of new or modified BPL operations. Accordingly, API

⁴ The Commission declined to extend such a right to other types of non-cellular licensees because, as opposed to public safety and CII entities, “their communications are unlikely to be of a mission-critical nature.” (*800 MHz Order* at ¶ 124).

recommends that a right of advance notification be available only to those CII entities who affirmatively request such notification by providing their contact and location (*i.e.*, postal zip code) information to the BPL database administrator, who would post the information on the database.⁵ BPL operators would then be able to consult the database to determine if any CII licensees in their planned operating area have requested prior notification. Presumably, the BPL operators could then simply provide electronic notification -- at one time -- to all public safety and CII licensees that are entitled to receive advance notice. Finally, in the interests of both simplicity and consistency, API urges the Commission to adopt, for purposes of this proceeding, the same definition of CII services as was adopted in the *800 MHz Order* (subject to any modifications thereof that subsequently may be adopted in the 800 MHz proceeding). (See ¶ 5, *supra*).

B. BPL Operators Should be Required to Respond to CII Licensee Interference Complaints Within 24 Hours

10. In addition to being eligible for prior notice, a CII entity -- like a public safety licensee -- should be entitled to expect that a BPL operator will respond to its complaint of harmful interference within 24 hours; if the BPL operator fails to do so, the BPL operator should be required to immediately cease the operations that led to the interference complaint. (See *Order* at ¶ 87). Otherwise, important safety-related communications may be jeopardized.

11. In its *800 MHz Order*, the Commission determined that, with respect to interference complaints made by public safety *or* CII licensees, the potentially interfering licensee(s) must respond within 24-hours and must complete their analysis and initiate corrective

⁵ API anticipates that, once the BPL database is operational, the Commission could issue a Public Notice that advises CII entities of their right to request advance notice of BPL operations and provides them with information regarding how they may make such a request.

action within 48-hours; for other types of licensees, a response must be made within 48-hours, and corrective action must be initiated within 96-hours. (*800 MHz Order* at ¶¶ 136-137). Thus, the agency clearly recognized in its 800 MHz proceeding that the prompt resolution of interference complaints is particularly important with regard to *both* public safety and CII systems.

12. Somewhat surprisingly, therefore, and without any stated justification, the Commission's BPL *Order* adopts expedited interference resolution procedures (*i.e.*, the 24-hour requirement) *only* for public safety entities. (*Order* at ¶ 87). For other types of licensees (including CII entities), no specific time limit is imposed. (*See id.*). API's Comments in response to the *NPRM* in this proceeding had urged the Commission to adopt certain priority interference resolution procedures for *both* public safety and CII entities.⁶ Accordingly, the importance of protecting CII communications clearly had been raised and addressed in the record of this proceeding. In view of the vital safety-related interests at stake, as well as the sound precedent established in the 800 MHz proceeding, API urges the Commission to reconsider its position and require that BPL operators respond within 24 hours to interference complaints made by both public safety and CII entities.⁷

III. CONCLUSION

13. API applauds the Commission's decision to provide public safety radio services with certain special procedural protections to reduce the likelihood that they will be subject to harmful interference from BPL operations and to ensure that any interference that does occur will be promptly resolved. At the same time, however, it has become well-recognized that CII

⁶ *See* Comments of API, ET Docket No. 04-37, at ¶¶ 20-21 (May 3, 2004).

⁷ Again, due to potential difficulties in identifying CII licensees based simply on a company's name, a CII entity that wishes to avail itself of the "24-hour rule" could be required to identify itself as such when it submits its interference complaint.

radio systems serve to protect the safety of life, health or property in much the same manner as public safety systems. Accordingly, API strongly urges the Commission to extend to CII licensees the 30-day prior notice and 24-hour response time requirements that have been imposed on BPL operators with regard to public safety licensees.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Petition for Reconsideration and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

**THE AMERICAN PETROLEUM
INSTITUTE**

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Date: February 7, 2005

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